

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JEROME DAVIS,

Plaintiff,

VS.

MARK ASHFORD,

Defendant.

4:06cv3013

MEMORANDUM AND ORDER

This matter is before the court on filing no. 26, the Judgment by the Eighth Circuit Court of Appeals dismissing the appeal (filing no. 20) by the plaintiff, Jerome Davis, and assessing the \$455 appellate filing and docketing fees against Mr. Davis. Because the plaintiff is a prisoner subject to the Prison Litigation Reform Act, the Eighth Circuit's Judgment states in pertinent part: "Mandate shall issue forthwith. The full \$455 appellate filing and docketing fees are assessed against the appellant. The court remands the collection of those fees to the district court."

The Eighth Circuit has instructed this court to assess an initial partial filing fee in a reasonable amount based on information available to the court. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). Given the number of filing fees the plaintiff is presently obligated to pay, and the plaintiff's most recently available trust account information (filing no. 6), the court assesses an initial partial appellate fee of \$1.00, subject to availability of funds in the plaintiff's inmate trust account. The remainder of the \$455 fees shall be collected in installments in the manner specified by 28 U.S.C. § 1915(b)(2).

THEREFORE, IT IS ORDERED:

1. That the Eighth Circuit Court of Appeals has adjudged the plaintiff liable for the full \$455 appellate filing and docketing fees;
2. That, because the plaintiff is a prisoner, the fees may not be waived but may be paid in installments pursuant to 28 U.S.C. § 1915(b);
3. That the plaintiff's custodian shall collect from the plaintiff's inmate trust account an initial partial appellate filing fee of \$1.00, and shall remit that amount to the Clerk of Court as funds become available;
4. That, thereafter, all present and future custodians of the plaintiff shall collect and remit the balance of the \$455 appellate filing and docketing fees in the manner required by 28 U.S.C. § 1915(b)(2); and

5. That the Clerk of the Court shall send a copy of this Memorandum and Order to the appropriate financial officer for the plaintiff's institution.

October 31, 2006.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge